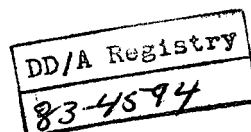


TRANSMITTAL SLIP		<small>DATE</small> 10-18-83
TO: DDA		
ROOM NO.	BUILDING	
REMARKS:		
FROM: DU		
ROOM NO.	BUILDING	EXTENSION

PRIORITYOLL 83-2492
18 October 1983

MEMORANDUM FOR: ✓ Deputy Director for Administration
Associate Deputy Director for Administration
General Counsel

FROM:

A rectangular box used to redact the name of the sender.

Office of Legislative Liaison

DD/A REGISTRY

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SUBJECT:

H.R. 3939 -- the Regulatory Oversight and Control Act of 1983

1. Attached for your review and comment is H.R. 3939, the Regulatory Oversight and Control Act of 1983. The bill is a revision of H.R. 220, the Regulatory Procedure Act of 1982 introduced earlier this year, to eliminate the unconstitutional legislative veto aspects of that bill. H.R. 3939 is currently pending before the House Judiciary and Rules Committees. A brief legal summary of H.R. 3939 prepared by the Office of Management and Budget (OMB) and the introductory remarks of Congressman Lott are also attached.

2. H.R. 3939 applies to all "rules" as currently defined in the Administrative Procedures Act (APA), but excludes from its coverage rules relating to the "military or foreign affairs functions." With the exception of the Agency's Freedom of Information (FOIA) and Privacy Act (PA) regulations (32 C.F.R. Chapter XIX), Agency regulations need not be published pursuant to the APA and are not covered by H.R. 3939.

3. Concerning rules that are covered by this bill, H.R. 3939 distinguishes between "major" and other rules. Section 621(a)(b) of H.R. 3939 defines "major rules" as those that are likely to result in an annual impact on the economy of \$100,000,000 or more or to have significant adverse impact on the environment, health or safety, and other specified areas. Agency FOIA and PA rules would not fit under this current definition of "major rules" and consequently would not be subject to the bills more stringent requirements.

4. OMB has requested the Agency's views concerning this bill. In light of the minimal impact this bill will have on the Agency, and the fact that the Agency did not object to the predecessor bill H.R. 220, unless I hear to the contrary prior to noon 27 October 1983, I will respond that the Agency has no objection to H.R. 3939.

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Attachments



BRIEF SUMMARY OF THE "REGULATORY OVERSIGHT & CONTROL ACT OF 1983"**TITLE I -- AGENCY RULEMAKING IMPROVEMENTS**

(Amendments to the Administrative Procedure Act)

Regulatory Analysis of Major Rules -- Agencies would be required to perform regulatory analyses of major rules and alternatives. Major rules are those which the agency or President determine would have an annual impact on the economy of \$100 million or more or would otherwise have a substantial impact. The agency would be required to choose the most cost-effective alternative unless another alternative is mandated by the underlying statute. The President (or the Vice President or other Executive Officer confirmed by the Senate) would establish guidelines for compliance and would review and monitor compliance. The Comptroller General may also monitor compliance.

Regulatory Agenda -- Each agency shall publish in the Federal Register in April and October of each year a regulatory agenda listing all rules the agency tends to propose, promulgate, modify, repeal or otherwise consider in the next 12-months. Certain information is required to be included with each rule listed on the agenda.

Agency Review of Existing Rules -- Not later than nine months after the effective date, each agency shall publish in the Federal Register a schedule for the review of existing major rules over the next ten years. A final schedule would be published not later than six months later, after public comment. The President could add rules to this review schedule. The reviews would be subject to the same comment and analysis requirements as new major rules.

Sunset for Major Rules -- All newly proposed and existing major rules scheduled for review shall include a date on which they shall cease to be effective, not later than 10 years after they are initially effective, in the case of new rules, and according to their sunset review schedule for existing rules.

Informal Rulemaking Process -- The informal rulemaking process is amended to provide greater notice, information, and opportunity for oral and written public comment.

Judicial Review (modified "Bumpers Amendment") -- When agency actions are challenged in the courts, the courts shall independently decide all relevant questions without according any presumption in favor or against the actions.

Appeals of Agency Orders ("race to courthouse" problem) -- When agency actions are challenged in two or more courts of appeals within ten days of their issuance, the Administrative Office of the U.S. Courts shall, by random selection, designate one court in which the record shall be filed.

Intervenor Funding -- Federal funds could not be used for public participation in agency rulemaking proceedings unless specifically authorized by law.

TITLE II -- CONGRESSIONAL REVIEW OF AGENCY RULES

(Amendments to Administrative Procedure Act)

Submission and Review of Agency Rules -- Agencies would be required to submit most rules of general applicability to Congress for a 90-day review period. The rules would be referred to one committee of primary jurisdiction in each House or to an ad hoc committee if more than one committee has primary jurisdiction.

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Congressional Action on Rules -- Major rules could not take effect unless a joint resolution of approval is enacted within 90-days of continuous session of Congress; other rules could take effect unless a joint resolution of disapproval is enacted within the 90-day period, and could take effect sooner if neither House has acted on a resolution within 60-days or if either House has rejected a resolution.

Committee Consideration of Resolutions -- In the case of major rules, resolutions of approval must be introduced by the chairman (or his designee) of the committee to which the rule is referred within one day after the rule is received, and the committee would be required to report the resolution not later than 45-days after receipt of the rule, or would thereafter be discharged of the resolution. Other rules would be subject to joint resolutions of disapproval which the committee could report at its own discretion or would be required to report if a "motion for consideration" is filed within 25-days after the rule is received and is signed by one-fourth of the membership of the House involved not later than 30-days after the rule is received. If the committee has not reported such a resolution within 45-days after receipt of the rule, the resolution would be discharged.

Floor Consideration of Resolutions -- Resolutions reported or discharged would be referred to the appropriate calendar of the House involved, a motion to proceed to their consideration would be privileged and, if adopted, debate on major rules resolutions would be for two-hours, and for other rules resolutions, one-hour. If one House receives a resolution from the other House and has not reported or been discharged of its own resolution within 75-days after the rule is received, the resolution of the other House would be placed on the appropriate calendar.

TITLE III -- REGULATORY OVERSIGHT & CONTROL AMENDMENTS TO HOUSE RULES (Amendments to the Rules of the House)

House Regulatory Review Calendar -- A Regulatory Review Calendar would be established in the House to which all joint resolutions of approval and disapproval would be referred once reported or discharged from committee. The Calendar would be called on the first and third Monday and second and fourth Tuesday of each month after the approval of the Journal. Priority consideration would be given to resolutions for rules whose review period would expire before the next calling of the Calendar. Motions to proceed to the consideration of a resolution would be nondebatable except for resolutions discharged pursuant to a "motion for consideration" signed by one-fourth of the membership, in which case the motion would be debated for twenty minutes.

Regulatory Appropriations Riders -- The present House rule restricting the offering of limitation amendments to appropriations bills would be amended. At present such limitation amendments can only be offered after other amendments are disposed of and only if the House votes down a motion that the Committee of the Whole rise. Under the proposed rule change, limitation amendments could be considered during the initial amendment process with respect to regulations for which a resolution of disapproval has not been considered by the House, or has been passed but not enacted, during the specified review period.

Oversight Improvements -- Committees would be required to formally adopt oversight plans at the beginning of a Congress and their funding resolutions could not be considered until the plans have been submitted to the Government Operations Committee. Committees would also be required in their final oversight reports to relate their actual oversight activities and accomplishments to their original plans. The Speaker could create special ad hoc oversight committees, subject to House approval.